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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re J.M., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.M.,

Defendant and Appellant.

A124572

(Contra Costa County
Super. Ct. No. J0601805)

I.

INTRODUCTION

Appellant J.M. appeals from a dispositional order recommitting him to Gateway Residential Program (Gateway), pursuant to Welfare and Institutions Code section 778 (section 778). He contends the juvenile court abused its discretion in not placing him in his guardian's home on an outpatient basis once the court found circumstances had changed, within the meaning of section 778. We find no abuse of discretion, and affirm.

II.

PROCEDURAL AND FACTUAL BACKGROUND

On October 10, 2006, the Contra Costa County District Attorney filed a petition under Welfare and Institutions Code section 602, alleging appellant committed three separate counts of lewd act upon a child under the age of 14 (Pen. Code, § 288, subd. (a)), and three separate counts of sodomy on a minor (Pen. Code, § 286,

subd. (b)(1)). On January 23, 2007, appellant entered a plea of no contest to one count of sodomy on a minor, in return for which all other counts were dismissed. He was ordered held in juvenile hall pending disposition.

A probation report was submitted on February 6, 2007. The facts relating to the charges made against appellant were taken from police reports of the Antioch Police Department. It was reported the victim, a minor, claimed he had been sexually molested by appellant, his cousin, three times. While characterizing the first two incidents as “rape,” the victim minor claimed his cousin sodomized him on the third occasion. Following the initial report, the victim’s mother took him to the hospital where a healed rectal tear was noted. It was reported appellant also had sexually molested a two-year-old girl.¹ During his interview with probation officials while in juvenile hall, appellant did not seriously deny the incidents, and said he needed professional counseling.

The report recommended appellant be removed from the home of his uncle and legal guardian and committed to the Division of Juvenile Justice where he could participate in the department’s sexual behavior treatment program. Due to the seriousness of the offenses and appellant’s refusal to talk about them, he was considered to be at very high risk to reoffend. The department felt the “predatory nature” of the offenses indicated a community level treatment program was not appropriate because appellant needed a “secure, structured setting.”

At the dispositional hearing held on February 6, 2007, appellant was ordered removed from his uncle’s home and placed in juvenile hall pending future placement. On February 23, 2007, he was accepted into Gateway.

Appellant’s placement was reviewed in February 2008. The probation department’s report indicated appellant wanted to continue his sexual therapy program at Gateway to “learn what made him offend.” Accompanying the report was a detailed and lengthy case plan assessment submitted by social worker Breata Simpson. Ms. Simpson

¹ The details of these incidents are omitted as unnecessary to our consideration of this appeal. We note appellant entered a no contest plea.

concluded appellant should remain at Gateway because he was in need of continued residential sexual offender treatment. Without continued residential treatment, Ms. Simpson felt appellant was at risk to reoffend. The juvenile court adopted the recommendation, and an order extending appellant's Gateway commitment was entered on February 8, 2008.

A similar review was conducted in August 2008. The juvenile court adopted the probation department's recommendation that appellant continue at Gateway. At that time, the probation report indicated appellant continued to demonstrate a willingness to participate in the program. Once his treatment was completed, his family was still willing to have appellant return to their home.

On October 7, 2008, the probation department filed a petition requesting a detention hearing. It was reported appellant had been discharged suddenly from Gateway because of "concerns regarding the minor's health and medical condition." The department asked appellant undergo a medical assessment, and, depending on the diagnosis and prognosis, that he be returned to an appropriate out-of-home placement. The department cautioned appellant had not yet completed his juvenile sex offender treatment program, and he should not be released into the community as he still posed a threat to public safety and to himself.

On October 21, 2008, appellant was ordered detained at juvenile hall. A contested hearing was set for November 7, 2008. Appellant's counsel thereafter filed a request for a prima facie hearing, pursuant to section 778. Interim orders were issued by the juvenile court concerning discovery and document review.

A section 778 hearing was ultimately held over two days, December 10, 2008, and February 3, 2009. At the conclusion of the hearing, the court ordered appellant be detained in juvenile hall until a suitable residential placement could be arranged through the probation department. On February 17, 2009, Gateway informed the probation department the program was willing to readmit appellant, however, a slot would not become available until the following month. Subsequently, on March 16, 2009, appellant reentered Gateway.

III.

ANALYSIS

A. Standard of Review

The sole issue raised by appellant in this appeal is whether the trial court erred in continuing him in residential placement following a section 778 hearing, instead of returning him to the home of his guardian and adopted parents for outpatient treatment, as requested at the hearing. Appellant concedes the juvenile court properly found there were changed circumstances, within the meaning of the statute, by virtue of his initial discharge from Gateway. However, he contends the court abused its discretion in continuing him in residential treatment.

Section 778 provides in material part: “Any parent or other person having an interest in a child who is a ward of the juvenile court or the child himself through a properly appointed guardian may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a ward of the juvenile court for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition shall be verified and, if made by a person other than the child, shall state the petitioner’s relationship to or interest in the child and shall set forth in concise language any change of circumstance or new evidence which are alleged to require such change of order or termination of jurisdiction.”

If the court concludes the best interests of the minor “may be promoted by the proposed change of order or termination of jurisdiction,” the court shall hold a hearing to determine whether the petition should be granted. (§ 778.) Appellate review of a juvenile court’s determination following a motion under section 778 is under the abuse of discretion standard. (*In re Corey* (1964) 230 Cal.App.2d 813, 831-832.) The test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court. (*In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465.)

B. Evidence Produced At Section 778 Hearing

The hearing was held over two days; December 10, 2008 and February 3, 2009. The first witness called was Breata Simpson, who was employed at Gateway from July 2005 until October 2008. During that time she became involved in appellant's treatment as his counselor. She was his counselor the entire time he was at Gateway.

As his counselor, Ms. Simpson met with appellant every week for an hour to see what progress he was making in his Pathways workbook. She also counseled him on behavioral issues and "around [his] sexual offending behaviors." She also led group sessions with appellant and five other residents, and taught him weekly classes relating to sexual behavior issues.

Based on her contact with appellant, Ms. Simpson was of the opinion that he was in the "mid to late stages of his therapy." Her opinion was based on the amount of time appellant had been in the program, the amount of work he had completed in his program, and his responses and reactions to the counseling. She noted that at some times, appellant did very well in his treatment, and at other times his response was sporadic and he did not do well. For example, she explained that at times appellant denied he had committed a sex crime, while admitting it at other times. Ms. Simpson was concerned because appellant did not consistently take responsibility for his conduct, noting the ability to do so is an important indicator as to whether appellant is likely to reoffend.

As time went on, appellant received more support from his family, particularly from his uncle. Although supportive, Ms. Simpson felt the uncle did not appreciate the severity of the problem appellant faced. Similarly, she felt the family did not recognize appellant's mental health needs. The uncle wanted appellant out of the program, felt he was being "warehouse[ed]," and was being kept at Gateway for money. The family appeared to believe there was nothing wrong with appellant, and that he did not need to be on medication.

Appellant's medical problem, which developed at Gateway in late 2008, had to do with his refusal to eat regularly. Ms. Simpson was concerned this eating issue may have been a ploy developed by appellant to get out of the program, and get back to his family

as he expressed wanting to do. He was somewhat torn, because he acknowledged he had more work to complete in the program.

Appellant was terminated from the program upon Ms. Simpson's recommendation. She felt his recent issues with eating and his deteriorating health justified termination. She also felt appellant was developing behavioral issues. For example, appellant would tell Ms. Simpson he had more work to do in the program, while telling his family and others he felt he had done everything required of him and he was ready to go home.

Although terminated from the program, Ms. Simpson felt appellant was not ready to go home. His behavior was sporadic, and he was only about 65 percent finished with his sex offender treatment. Thus, if released to home, he was at risk to reoffend.

On cross-examination, Ms. Simpson testified that appellant's eating problem surfaced shortly before she told him she was leaving the program. When told, appellant was shocked, and was angry and felt abandoned. Behavioral levels are assigned to each program participant ranging from Level One up to Level Three and then to "Contract" level. Although appellant had achieved Contract level, he slipped back into Level Three several times during the year. He did achieve the point where he was eligible for home visits and he had several such visits. It was never reported that he misbehaved while away from Gateway.

Ms. Simpson also admitted it is possible for someone to complete the Gateway program without being a resident. However, she believed appellant needed a structured environment that would provide him with both sex offender and mental health treatment. If he returned to Gateway and made consistent progress, he could successfully complete the program in another six to eight months.

Appellant's uncle testified that appellant lived with his family all of his life. In the summer of 2008, the uncle wrote to Gateway and expressed his desire to reunify with appellant. He did so because he felt appellant was getting ready to complete his program and he wanted appellant to return to the community.

During 2008, appellant had a number of home visits. He was never refused further visits because of misbehavior while he was visiting. To ensure Gateway's rules for the visits were not violated, appellant slept with his older brother. His uncle also put an alarm on the door, so if anyone left the bedroom during the night, it would ring.

While the uncle initially objected to medicating appellant, he no longer opposed it. Appellant has admitted the molestations to his uncle, who wanted to see appellant gets the right treatment, which includes having the family go through therapy, accepting what happened, and then move on as a family. If appellant was returned home, the family planned to continue his therapy, put alarms on the doors, and make sure he was not left alone with the younger children in the family. Both the uncle and his wife worked fulltime outside the home during the day.

Appellant testified he had been on Contract status since May 2008. He had lost that status earlier when he failed to report a staff member had pornographic material on her phone. At the time of his termination from the program, he was working on Chapter 11 of the 12-chapter Pathways work book. However, he was redoing the work on some earlier chapters because his counselor thought he had rushed through some of them.

When his uncle raised the issue of appellant coming home during the summer of 2008, appellant was torn. Appellant wanted to come home, but he also knew he needed more therapy. He needed more work on his coping skills because he still did not have total control over his depression. Appellant knew he needed therapy and liked it now because it was a resource allowing him to express himself. He thought he could participate in therapy while living with his family, and believed he was not likely to reoffend.

According to appellant, he was terminated because the staff at Gateway did not have the skill or time to deal with his eating disorder. Appellant admitted he was on suicide watch two times while at Gateway. The first time was during his first year there when his grandmother died, and the second time was shortly before his termination from the program because of his eating disorder.

Appellant disagreed with Ms. Simpson's assessment that he still lacked victim empathy. He respected her opinion, but disagreed and would try to show how sincere he was in his remorse for the victims.

Appellant had talked to another therapist, Mr. Paul, about continuing his therapy and the Pathways workbook while having daily visits with his family. He could not do that while residing at Gateway because it was too far from where his family lives.

On cross-examination, appellant stated he would agree to go back to Gateway for residential treatment. In fact, he stated he would like to go back there and finish his Pathways even if Ms. Simpson had left the program. On redirect examination, appellant clarified that his preference would be to complete his program while living at home, but he also felt if he needed to go to a residential program, it should not be more than a few months while he finished his Pathways and participated in a few more family therapy sessions.

After appellant completed his testimony, counsel argued their respective positions. Appellant's counsel argued he needed more therapy, but claimed appellant's needs were not being met at Gateway. Counsel felt appellant would not get the assistance he needed unless he was returned to the community. She requested the probation department be ordered to develop a treatment plan that could be administered while he lived with his family.

The juvenile court found there was a change in circumstances, within the meaning of section 778, because appellant had been terminated by Gateway, and, at that time, there was no indication the program would take him back. The court also concluded appellant needed to be in a residential program despite his termination, and the probation department was directed to report back to the court with its recommendations as to what residential program alternatives to Gateway were available.

As noted, a short time following the hearing, Gateway notified probation it would readmit appellant into its program. In March 2009, appellant was received back into Gateway.

C. The Juvenile Court Did Not Abuse its Discretion In Finding Changed Circumstances and By Returning Appellant to Gateway and Not to the Community

The trial court's decision to continue appellant in a residential treatment facility was well-supported by the record and, accordingly, there was no abuse of discretion in the placement ordered following the section 778 hearing.

The testimony of Breata Simpson factually supported the court's decision. She was appellant's counselor, and was intimately involved in his treatment during the entire time he was in residence at Gateway. She noted that at some times, appellant did very well in his treatment, and at other times his response was sporadic and he did not do well. Ms. Simpson was concerned because appellant did not consistently take responsibility for his conduct, noting the ability to do so is an important indicator as to whether the minor is likely to reoffend.

Based on her contact with appellant, Ms. Simpson was of the opinion that he was in the "mid to late stages of his therapy," and he was only about 65 percent finished with his sex offender treatment. Thus, it was this counselor's opinion that if released to home, appellant was at risk to reoffend.

This testimony alone justified the continued placement of appellant in the Gateway program, once it was agreed he could be readmitted. As the *Corey* court noted, the function of the reviewing court upon appeal of a juvenile court order "is to determine whether the record contains any substantial evidence tending to support the finding of the trial court. [Citations.] Consonant with this principle is the rule that when two or more inferences reasonably can be deduced from the evidence the reviewing court cannot substitute its own inferences for those of the trial court. [Citations.] *Estate of Teed* [(1952)] 112 Cal.App.2d 638 . . . , defines substantial evidence as follows: '[I]t clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with "any" evidence. It must be reasonable in nature, credible, and of solid value; it must actually be 'substantial' proof of the essentials which the law requires in a particular case.' [Citations.] The principle of substantial evidence is

applicable in juvenile court proceedings as in other matters. (*In re Corrigan* [(1955)] 134 Cal.App.2d 751, 754) Accordingly, the findings of the juvenile court judge will not be disturbed on appeal where there is substantial evidence to support them. [Citations.]” (*In re Corey, supra*, 230 Cal.App.2d at pp. 823-824.)

Applying these principles to the record before us, we conclude the challenged order is supported by substantial evidence, and was not an abuse of the juvenile court’s discretion.

IV.
DISPOSITION

The order is affirmed.

RUVOLO, P. J.

We concur:

REARDON, J.

SEPULVEDA, J.